



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 14-03457
)
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

06/12/2015

Decision

WHITE, David M., Administrative Judge:

Applicant falsified his 2013 security clearance application concerning his substantial delinquent debt, which remains unresolved. Resulting security concerns were not mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on May 29, 2013.¹ On October 28, 2014, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns

¹Item 4.

under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).² The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines that came into effect in the Department of Defense on September 1, 2006.

Applicant submitted a written response to the SOR on November 13, 2014, and requested that his case be decided by an administrative judge on the written record without a hearing.³ Department Counsel submitted the Government's written case on January 23, 2015. A complete copy of the File of Relevant Material (FORM)⁴ was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on March 23, 2015. He submitted no additional material in response to the FORM, made no objection to consideration of any contents of the FORM, and did not request additional time to respond. I received the case assignment on May 22, 2015.

Findings of Fact

Applicant is 62 years old, and has worked for a defense contractor since May 2013. He is married, with two adult children. He earned a bachelor's degree in engineering in 1974, and an associate's degree in quality assurance in 1983. He served on active duty as a commissioned officer in the Army from 1974 to 1979, and then for 20 years in the Army Reserve. He was honorably discharged, and held a security clearance throughout his military service.⁵

²Items 1 and 2.

³Item 3.

⁴Department Counsel submitted seven Items in support of the SOR allegations. Item 7 is inadmissible and will not be considered or cited as evidence. It is an unsworn summary of an interview of Applicant that was conducted by the Office of Personnel Management, on June 18, 2013. This summary was not certified by him to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation summary is inadmissible in the absence of adoption by Applicant or evidence from an authenticating witness. Applicant's admissions, that he made in Item 3, also make the contents of Item 7 cumulative.

⁵Item 4.

In his response to the SOR, Applicant admitted all of the allegations concerning his delinquent debts in SOR ¶ 1, but denied the allegation concerning his personal conduct in SOR ¶ 2.⁶ Applicant's admissions are incorporated into the following findings of fact.

Applicant admitted the five delinquent debts alleged in the SOR, ranging from \$2,676 to \$53,325, and totaling \$105,395. Four of these debts, totaling just over \$52,000, became delinquent between August and November of 2008. Three of them are charged-off credit card accounts,⁷ and the fourth is a consumer debt that was placed for collection.⁸ Applicant was employed as the Director of Operations for a company from September 2000 to March 2009, when he was laid off. He said that he wanted to refinance his house to pay off credit card and student loan debts in 2008, but was unable to do so because he had no more equity in the home. The remaining and largest debt is a defaulted student loan that the record credit reports indicate was opened in February 2010.⁹ There is nothing in the record to indicate why Applicant took out this loan. During February 2010, he was Vice President of Operations for another company.¹⁰

Applicant denied that he deliberately falsified his financial information by answering, "No," in response to the questions about delinquencies involving routine accounts in Section 26 on his 2013 security clearance application. He said that he believed that response to be true at the time. However, those questions asked about delinquencies during the preceding seven years, and applicant admitted that he fell behind on payments to his creditors in 2008 when he was unable to refinance his home mortgage. He said that he contracted with a debt relief firm, and paid them over \$18,000 to attempt to obtain negotiated settlements of his debts. He further said, "In time, I stopped receiving notices and phone calls from my creditors. I saw this as a sign that my debt issues were being resolved."¹¹

The record does not address whether Applicant obtained financial counseling. He offered no evidence showing a workable budget, from which his ability to resolve his admitted delinquencies and avoid additional debt problems could be predicted with any confidence. The record lacks evidence concerning the quality of Applicant's professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. No character witnesses provided statements describing his judgment, trustworthiness, integrity, or

⁶Item 3.

⁷SOR ¶¶ 1.b, 1.c, and 1.d.

⁸SOR ¶ 1.e.

⁹SOR ¶ 1.a.

¹⁰Items 3, 4, 5, and 6.

¹¹Items 3 and 4.

reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Department Counsel asserted, and the record evidence established, security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant admitted more than \$105,000 in unresolved delinquent debts that he incurred over the past seven years. He provided no corroboration for his claims to have attempted resolution of these delinquencies through payments to a debt relief firm, or of his present ability to live within his means. His ongoing pattern and history of inability or unwillingness to pay lawful debts raises security concerns under DCs 19(a) and (c), and shift the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant has incurred substantial delinquent debts over the past seven years, which continue to date despite his recent employment status and claims of solvency. He offered no evidence from which to establish a track record of debt resolution. He also failed to demonstrate that conditions beyond his control contributed to his financial problems or that he acted responsibly under such circumstances. MC 20(e) requires documented proof to substantiate the basis of a dispute concerning an alleged debt, and Applicant admitted all of the alleged delinquencies. Accordingly, the record is insufficient to establish mitigation under any of the foregoing provisions concerning his financial irresponsibility.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 sets forth one condition that describes security concerns that are disqualifying with relation to the allegations in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant's attempt to justify his false denial, on his security clearance application, of his delinquent debts during the preceding seven years is not credible. He admitted that he fell behind on numerous debts in 2008, when he was unable to refinance and increase his mortgage debt in order to pay them. He claimed to have paid substantial sums to a debt relief firm in an attempt to resolve those debts. He further admitted receiving "notices and phone calls from my creditors" concerning his delinquencies that eventually stopped. He is an educated individual with extensive experience holding and renewing security clearances. This deliberate falsification

demonstrated questionable judgment, untrustworthiness, unreliability, lack of candor, and unwillingness to comply with rules and regulations.

AG ¶ 17 provides conditions that could mitigate personal conduct security concerns. Five have potential applicability under the facts in this case:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant never attempted to correct the falsification on his security clearance application, and persisted in offering a self-contradictory explanation for it, so mitigation under MC 17(a) was not shown. Applicant provided insufficient evidence from which to conclude that this falsification of his financial situation does not adversely reflect on his current reliability, trustworthiness, and judgment. Nor did he demonstrate steps to reduce vulnerability to manipulation or duress. Thus, Applicant failed to mitigate security concerns by establishing any of these conditions.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is an accountable, educated, and experienced adult. He is responsible for the voluntary choices and conduct that underlie the security concerns expressed in the SOR. He still has substantial delinquent debts, which arose over the past seven years and remain unresolved despite his full employment during the past two years. He offered insufficient evidence of financial counseling, rehabilitation, better judgment, or responsible conduct in other areas of his life to offset resulting security concerns. He deliberately falsified material information concerning his financial problems on his security clearance application. The potential for pressure, coercion, and duress remain undiminished. Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from his financial considerations and personal conduct .

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

DAVID M. WHITE
Administrative Judge